

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION



April 9, 2004

Lincolnland Agri-Energy, LLC,
Petitioner

vs.

Lamotte Township, Crawford County, Illinois, and The Indiana
Railroad Company,
Respondents

T04-0024

Petition for an order authorizing a new at-grade railroad spur
crossing with flashing signal lights at Lamotte Township Road
286A (also known as 1725th Street), Palestine, Illinois.

TO ALL PARTIES OF RECORD:

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

Attached is a copy of the Administrative Law Judge's Proposed Order in the
above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to
the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested
case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the
Hearing examiner is required under Section 200.820 to issue a Proposed Order to all
parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and
replies thereto may be filed by the parties within the time periods established by the
rules of such other times as fixed by the hearing examiner. The times for filing
exceptions and replies are fixed at ten days and five days, respectively.

Entered:

A handwritten signature in cursive script that reads "June B. Tate".

June B. Tate
Administrative Law Judge
Review & Examination Program

JBT:rsc
Railroad Staff: Mr. Daniels

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PROPOSED ORDER

By the Commission:

On March 11, 2004, Lincolnland Agri-Energy, LLC (LLAE) filed a verified petition with the Illinois Commerce Commission ("Commission") in the above-captioned matter seeking an order authorizing the construction of new spur track across 1725th Street/TR 286A at a location 150 feet south of an existing highway-rail grade crossing (AAR/DOT 292 552U, milepost 124.0-X) owned by the Indiana Railroad Company, naming as Respondents Lamotte Township ("Township"), Crawford County ("County"), Illinois, and The Indiana Railroad Company ("the Railroad").

Richard Daniels, Railroad Safety Specialist of the Commission's Bureau of Transportation, conferred with the parties, investigated the site, and contributed the information contained herein.

Petitioner, LLAE, is an association organized under the Illinois Agriculture Co-Operative Act (805 ILCS 315) doing business in the State of Illinois. LLAE owns and will operate an ethanol production facility now under construction to process corn deliveries by members of the cooperative in Lamotte Township, Illinois. The facility will receive corn by truck and rail, process the corn into ethanol and other by-products, and ship the ethanol and by-products by truck and rail. LLAE seeks to construct a new at-grade railroad spur crossing, protected with automatic flashing light signals, crossing TR 286A for access to its facility. The single track spur of LLAE will extend westerly from its switch with the Railroad's main line approximately 750 feet east of TR 286A, crossing TR 286A 150 feet south of the Indiana Rail Road Company's main line crossing of TR 286A, then extending 1600 feet into the LLAE facility site before switching into a three track siding and terminating approximately 500 feet further onto the site. TR 286A would carry car and truck vehicular traffic to serve as access to LLAE and other industries located along this section of road. LLAE will require approximately 70 trucks per day for delivery of grain and other freight to the plant and for export of bi-

products. It is estimated that the 10-year future growth of traffic using the proposed crossing will average 725 vehicles per day, made up of 520 passenger units, 30 single axle units, and 175 multi-axle units. The railroad traffic for LLAE will normally consist of one (1) movement of approximately 10 cars into the facility daily at around 6:00 pm and one (1) movement of approximately 10 cars leaving the facility daily at around 6:30 p.m. By reason of the volume of highway traffic and the time of day and the rail transportation of ethanol over the proposed crossing, said crossing would warrant flashing light signal protection. The installation of flashing light signals would be necessary in the interest of public safety. LLAE shall install a new crossing and flashing light signals at their own expense.

LLAE requests that the Commission act based on the information on hand and requests that hearing be waived. Respondents have communicated to Commission staff that they have no problems with the proposed new crossing with flashing light signals, and do not desire that a hearing take place as long as they have the opportunity to comment on a proposed order before a final order is given.

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the subject matter and parties herein;
- (2) matters contained in the prefatory portion of this Order are adopted as findings of fact;
- (3) Petitioner, LLAE, is an association organized under the Illinois Agriculture Co-Operative Act (805 ILCS 315) doing business in the State of Illinois;
- (4) Lamotte Township, in Crawford County, is a political subdivision of the State of Illinois;
- (5) LLAE's new spur track will cross, at grade, a public highway in Lamotte Township, Crawford County, Illinois known as TR 286A; Lamotte Township has jurisdiction over said TR 286A; the single track spur of LLAE will extend westerly from its switch with the Indiana Rail Road Company's main line approximately 750 feet east of TR 286A, crossing TR 286A 150 feet south of the Indiana Rail Road Company's main line crossing of TR 286A, and extend 1600 feet onto the LLAE facility site;
- (6) rail traffic on the LLAE spur track will normally consist of one train (approximately 10 railroad cars in length) each way daily; the train speed on this spur will be 1-10 miles per hour;
- (7) the installation of flashing light signals at this new spur track will be necessary in the interest of public safety; LLAE will construct a new crossing surface on TR 286A, with the appropriate roadway approaches,

and install flashing light signals at said crossing; these improvements will be accomplished and paid for by the Petitioner, Lincolnland Agri-Energy, LLC, and no funds are requested or are forthcoming from the Township, the County, the Railroad, or the Grade Crossing Protection Fund of the Motor Fuel Tax Law;

- (8) the construction of this new spur and new at-grade crossing with flashing light signals at this location is necessary to handle the train movements that are necessary for the business of LLAE, and are consistent with the best interest of the public health, convenience, and necessity;
- (9) Staff of the Railroad Safety Specialists Program have reviewed this project and concluded that, due to the low train volume and low speed on the proposed new spur track, gates are not required at the new crossing, and automatic flashing light signals will provide reasonable and sufficient protection to the public;
- (10) LLAE should construct highway approaches and a new crossing surface at TR 286A, and install new automatic flashing light signals at said new spur track crossing, as set forth in Finding (7) herein, and they should be constructed in accordance with the requirements of 92 Illinois Administrative Code 1535;
- (11) LLAE should file Form 3 of 92 I.A.C.1535 of this Commission showing details of the new crossing construction and the automatic warning device installations herein required, and shall receive approval thereof by X-Resolution *before commencing the work*;
- (12) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects the parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED that permission be, and it is hereby granted to the Lincolnland Agri-Energy, LLC (LLAE) to construct a new spur track across the 1725th Street/TR 286A in Lamotte Township, Crawford County, Illinois, to construct a new crossing surface at same, to construct approaches along the roadway to the new crossing, and to install automatic flashing light signals at the new crossing, and all shall be accomplished in accordance with 92 Illinois Administrative Code 1535;

IT IS FURTHER ORDERED that the cost of the improvements herein approved be, and the same are hereby to be borne entirely by LLAE;

IT IS FURTHER ORDERED that the LLAE is hereby required and directed to proceed with the project herein approved and in all aspects thereof to conform to the requirements of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that LLAE shall file Form 3 of 92 I.A.C.1535 of this Commission showing details of the new crossing construction and automatic warning device installation herein required, and shall receive approval thereof by X-Resolution before commencing the work.

IT IS FURTHER ORDERED that LLAE shall notify the Director of Processing, Transportation Division of the Commission within six months from the date of this order of the progress they have made toward completion of the work herein required.

IT IS FURTHER ORDERED that the work herein approved shall be completed within one year of the date of this Order.

IT IS FURTHER ORDERED that LLAE shall thereafter maintain the new spur track, the new crossing surface, and the new automatic flashing light signal devices in accordance with 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that, in accordance with 92 Illinois Administrative Code 1535, Lamotte Township shall thereafter maintain the new roadway approaches to the new crossing.

IT IS FURTHER ORDERED that LLAE, in conjunction with the Indiana Rail Road Company, shall within five (5) days of the completion of the work herein, file a National Inventory Update Report Form with the Commission's Director of Processing, Transportation Division, as notice of said completion.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserve the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request are insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that any future changes at the crossings by LLAE shall be made in accordance with 92 Illinois Administrative Code 1535 and all applicable Commission rules and regulations.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this -- day of --, 2004.

Chairman